

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2020, Legislative Day No. 1

Resolution No. 13-20

Mr. Izzy Patoka, Councilman

By the County Council, January 6, 2020

A RESOLUTION of the Baltimore County Council requesting the Baltimore County Planning Board in consultation with the Baltimore County Agricultural Land Preservation Advisory Board keep apprised of industrial hemp developments on the federal and state level and notify the County Council of any important opportunities for public comment, such as the publication of Maryland Department of Agriculture regulations, the submission of a hemp production plan to the United States Department of Agriculture, or the introduction of any related bills in the Maryland General Assembly and consider changes to the County's zoning regulations in light of new state and federal policies regarding industrial hemp production that may strike the proper balance between the quality-of-life interests of rural residential homeowners and the commercial and agricultural interests of potential industrial hemp growers.

WHEREAS, industrial hemp, also known as the plant species *Cannabis sativa* L., is an agricultural commodity that can be used for a variety of industrial and consumer products. Hemp fibers can be spun into rope, textiles, and clothing. Hemp can be pulped and refined into paper, fiberglass, and insulation. Hemp seeds can be refined into oils, plastics, and biofuel; and

WHEREAS, while it is derived from the same plant species as marijuana, industrial hemp does not contain a biologically significant amount of the marijuana's psychoactive compound, delta-9 tetrahydrocannabinol (THC); and

WHEREAS, in 1937, industrial hemp production was effectively banned in the United States when Congress passed the Marihuana Tax Act. In 1970, Congress officially prohibited most hemp production with the Controlled Substances Act (CSA) by defining nearly all hemp as marihuana and classifying marihuana as a Schedule I controlled substance; and

WHEREAS, in 2014 and again in 2018, Congress made significant changes to the classification of hemp. The Agricultural Improvement Act of 2018 (also known as the 2018 Farm Bill) removes hemp from the definition of marihuana under the CSA, permits the interstate transport and shipment of hemp in the United States, and allows states to begin developing hemp production plans; and

WHEREAS, a hemp production plan describes how a state will license, monitor, and regulate hemp production. For hemp to be produced legally in a state, that state's department of agriculture must develop a hemp production plan and submit it to the United States Department of Agriculture (USDA) for review and approval. On October 31, 2019, the USDA published its interim final rule and request for comments (84 CFR 990) establishing its procedure to review and approve hemp production plans pursuant to the 2018 Farm Bill; and

WHEREAS, the Maryland General Assembly, in its 2018 legislative session, passed H.B. 698 establishing Maryland's Industrial Hemp Research Pilot Program, as permitted under Congress's Agricultural Act of 2014 (2014 Farm Bill). Among other things, the Pilot Program allows a very limited number of growers to obtain a permit from the Maryland Department of Agriculture (MDA) to grow industrial hemp in partnership with an institution of higher education. On January 18, 2019, the MDA published industrial hemp regulations in the Maryland Register pursuant to H.B. 698 and adopted those regulations on January 29, 2019. To date, approximately 63 growers participate in the Pilot Program; and

WHEREAS, in response to the 2018 Farm Bill, the General Assembly, during its 2019 legislative session, passed H.B. 1123 (effective June 1, 2019) which expands industrial hemp production in Maryland beyond the Pilot Program. Among other things, the bill requires the MDA to develop and submit a hemp production plan to the USDA and updates the marijuana definition in Maryland's criminal law to clarify that industrial hemp "with a [THC] concentration that does not exceed 0.3% on a dry weight basis" is not marijuana, mirroring the new federal definition; and

WHEREAS, Baltimore County has a rich heritage of farming and was the first county in the nation to preserve much of its rural areas with the Urban-Rural Demarcation Line; and

WHEREAS, rural preservation is also managed through the Baltimore County Zoning Regulations (BCZR) with the Resource Conservation (R.C.) zoning classification, whose purpose is to protect both natural and man-made resources from the compromising effects of specific forms and densities of development while providing sufficient and adequate areas for rural-suburban and related development in selected and suitable areas; and

WHEREAS, the BCZR balances the priorities of R.C. areas with sub-classifications. R.C. 2 is the agricultural zone, established to foster conditions favorable to a continued agricultural use of the productive agricultural areas of the County by preventing incompatible forms and degrees of urban uses. R.C. 3 is a rural development zone meant to foster conditions favorable to agricultural and residential use of the land while still maintaining the rural character of the area. R.C. 4 is a watershed protection zone established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds. R.C. 5 is the rural-residential zone, established to eliminate scattered and generally disorderly patterns of rural-residential development that encroach onto productive or critical natural resource areas and regulating such

residential development to allow basic services, like sewer and water systems, where they are not anticipated; and

WHEREAS, conflicts between residential and agricultural landowners in R.C. areas arising from farming are contemplated by the Baltimore County Zoning Regulations. The R.C. 2, R.C. 3, and R.C. 4 use regulations contain a protection for businesses engaged in farming or agricultural uses. That protection states “any dwelling... in or near [the] zone may be subject to the inconveniences or discomforts arising from agricultural operations, including but not limited to, noise, odors, fumes, dust, the operations of machinery of any kind during any 24-hour period (including aircraft), the storage and disposal of manure and the application, by spraying or otherwise, of chemical fertilizers, soil amendments, herbicides and pesticides. The County shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state or County health or environmental requirements.” However, these protections are not present in the R.C. 5 use regulations; and

WHEREAS, according to the Maryland Farm Bureau, “industrial hemp follows a similar growing pattern as corn and soybeans [with a] typical planting season [from] mid to late spring with a harvest in early September.” As the plant matures, the flowers that top the eight to ten foot stalks begin to bloom, emitting a pungent odor, which increases until the plant is harvested. Many industrial uses for hemp require a post-harvest drying period of one to two months before further processing. During this drying process the plant has been known to emit fouler odors than prior to harvest; and

WHEREAS, of the 63 industrial hemp growing sites in Maryland, three are located in Baltimore County. GPS Nurseries, LLC at 1810 Broadway Road, Lutherville, MD 21093 (registration no. 2019-008); Vineyards Edge Farm, LLC at 15906 Falls Road, Sparks, MD 21252

(registration no. 2019-039); and One Straw Farm, LLC at 19718 Kirkwood Road, White Hall, MD 21161 (registration no. 2019-059); and

WHEREAS, the sites located at 15906 Falls Road and 19718 Kirkwood Road have virtually no residential neighbors and are zoned R.C. 2. However, the site located at 1810 Broadway Road abuts several residential properties on all sides and is split-zoned approximately 25 percent R.C. 4 and 75 percent R.C. 5; and

WHEREAS, since August, 2019 the residential neighbors of 1810 Broadway Road have experienced an increasingly foul and pervasive odor coming from the industrial hemp crop. Through the summer and autumn months, the neighbors indicate they have experienced headaches and nausea from the odor, sustained odor related damage to their clothes and HVAC systems, were prevented from opening doors and windows, and could not enjoy the rural character of their neighborhood; and

WHEREAS, over the last few years, Congress and the General Assembly have sought to carefully rethink decades of overly restrictive policy on hemp production in the United States and Maryland. Federal and state legislators have rightly delegated the responsibility of administering their new policy to the USDA and MDA respectfully; and

WHEREAS, the Administrative Procedures Act permits any member of the public to file a written comment with the USDA on its interim final rule setting forth the procedure to review and approve state hemp production plans. The public comment filing deadline is December 30, 2019. While comments may be submitted after that date, the USDA is not required to consider them in the rulemaking process. More information can be found at the USDA's website for hemp at www.usda.gov/topics/hemp; and

WHEREAS, As of November, 2019, the MDA has not published regulations pursuant to H.B. 1123, but is in the process of drafting them. While the Maryland Administrative Procedure Act does not cover the time prior to publication, members of the public are welcome to informally raise concerns with the ongoing process of expanding hemp production and file public comments after publication. Generally, Maryland agencies must publish proposed regulations in the Maryland Register and post them to their website within three business days . See *Md. Code Ann., State Gov't* § 10-112.1. Agencies must wait, at minimum, 45 days after publication before adopting a proposed regulation and must allow public comment for at least 30 of those 45 days. See *Md. Code Ann., State Gov't* § 10-111. More information can be found at the MDA's website for industrial hemp at www.mda.maryland.gov/plants-pests/Pages/Industrial-Hemp.aspx; and

WHEREAS, in addition to the administrative opportunities for input, members of the public may always raise concerns with their state elected officials, who have been at the forefront of bringing industrial hemp to Maryland; and

WHEREAS, the County Council recognizes the years of work by legislators and advocates to change national and state policy regarding hemp and appreciates that reform efforts that will continue from the legislative to the regulatory process; and

WHEREAS, the County Council seeks to promote the safe production of industrial hemp in Baltimore County, as it does with all forms of traditional agricultural farming. However, the County Council also recognizes a need for action to address the serious concerns raised by Baltimore County residents living in proximity to industrial hemp farms, particularly in the more densely residential R.C. 5 Zone; now therefore

BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, that the County Council hereby expresses support for the goals of H.B. 698 and H.B. 1123 to allow hemp

production in Maryland, while holding reservations regarding the possible health effects of active operations to residential neighbors; and

BE IT FURTHER RESOLVED THAT, the County Council hereby requests the Baltimore County Planning Board in consultation with the Baltimore County Agricultural Land Preservation Advisory Board keep apprised of industrial hemp developments on the federal or state level and notify the County Council of any important opportunities for public comment, such as the publication of MDA regulations, the submission of a hemp production plan to the USDA, or the passage of any related bill by the General Assembly and consider changes to the County's zoning regulations in light of new state and federal policies regarding industrial hemp production that may strike the proper balance between the quality-of-life interests of rural residential homeowners and the commercial and agricultural interests of potential industrial hemp growers; and

BE IT FURTHER RESOLVED THAT, copies of this Resolution be sent to Jim Drews, Program Manager, Industrial Hemp Pilot Research Program, Turf & Seed Section, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, MD 21401; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect from the date of its passage by the County Council.